

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Valentina Concha-Toro	Team: Squad #15	CCRB Case #: 202004257	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 06/15/2020 7:00 AM	Location of Incident: Corner West 183rd Street and Audubon Avenue	Precinct: 34	18 Mo. SOL 12/15/2021	EO SOL 5/4/2022	
Date/Time CV Reported Mon, 06/15/2020 9:42 AM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Mon, 06/15/2020 9:42 AM		
Complainant/Victim	Type	Home Address			
Subject Officer(s)	Shield	TaxID	Command		
1. POM Josue Torres	21771	960031	034 PCT		
Witness Officer(s)	Shield No	Tax No	Cmd Name		
1. SGT Hekmatulla Mukhtarzada	03383	949517	034 PCT		
2. POM Christophe Harrington	16553	964543	034 PCT		
Officer(s)	Allegation	Investigator Recommendation			
A.POM Josue Torres	Discourtesy: Police Officer Josue Torres spoke discourteously to § 87(2)(b)				
B.POM Josue Torres	Off. Language: Police Officer Josue Torres made remarks to § 87(2)(b) based upon ethnicity.				

Case Summary

On June 15, 2020, § 87(2)(b) submitted this complaint at the 34th Precinct stationhouse. On that same day Sgt. Hekmatullah Mukhtarzada of the 34th Precinct called the CCRB.

At approximately 7:00 a.m. on June 15, 2020, § 87(2)(b) was in her apartment at § 87(2)(b) on the second floor, Manhattan. § 87(2)(b) and her 10-year-old daughter were asleep in the apartment and § 87(2)(b) had her bedroom window open. Outside, standing on the sidewalk at the intersection of West 183rd Street and Audubon Avenue was PO Josue Torres of the 34th Precinct and approximately seven uniformed male officers. PO Torres was speaking to the other seven officers. PO Torres used sexually explicit language during which he said he was going to “get his dick sucked” and he was going to “put his dick” in multiple orifices (**Allegation A: Discourtesy**, § 87(2)(g)). Through her open window, § 87(2)(b) told PO Torres that what he had been discussing was disgusting. PO Torres told § 87(2)(b) that she should be accustomed to the language he was using because the “bachata” frequently played in the neighborhood (**Allegation B: Offensive Language**, § 87(2)(g)).

One cellphone video taken by § 87(2)(b) daughter was provided to the investigation (Board Review 01).

Findings and Recommendations

Allegation (A) Discourtesy: Police Officer Josue Torres spoke discourteously to § 87(2)(b).

Allegation (B) Offensive Language: Police Officer Josue Torres made remarks to § 87(2)(b) based upon ethnicity.

It is undisputed that § 87(2)(b) was in her apartment on the second floor of § 87(2)(b) which is located at the corner of West 183rd Street and Audubon Avenue. § 87(2)(b) window was open. PO Torres was assigned to a fixed post on West 183rd Street and Audubon Avenue and standing at the corner with his partner, PO Christopher Harrington. Another additional six uniformed male officers arrived and stood outside with PO Torres and PO Harrington. All of the officers were standing outside and dressed in uniform. PO Torres spoke to the seven officers and used sexually explicit language. § 87(2)(b) spoke to PO Torres from her window and told him what he was saying was disgusting. PO Torres told § 87(2)(b) that what he was discussing was “locker room talk.” § 87(2)(b) walked outside to where the officers had been standing. § 87(2)(b) asked PO Torres to apologize. PO Torres denied that there was anything for him to apologize for and that none of the statement made were directed at § 87(2)(b). PO Torres told § 87(2)(b) that it was a private conversation.

§ 87(2)(b) stated (Board Review 02) that she was not able to recall all the details of what PO Torres said to the other seven officers present, but while speaking PO Torres said he was going to “get his dick sucked,” and he was going to “put his dick” in multiple orifices. PO Torres used explicit language for approximately one minute. While speaking to PO Torres from the window, PO Torres told § 87(2)(b) that she should be used to the kind of language he used because of the amount of “bachata” music that is played in the neighborhood. § 87(2)(b) believed the comment regarding “bachata” was a commentary on the predominantly Dominican population of Washington Heights and § 87(2)(b) was offended by the comment due to her own Dominican and Puerto Rican heritage.

PO Torres stated (Board Review 03) that other than PO Harrington he did not recall who the other six officers were. There were no supervisors on scene. The conversation he and the other officers were having were about “precinct politics” which PO Torres specified was regarding female officers used their gender to advance their careers at the precinct. PO Torres confirmed he used sexually explicit language due to the topic of the conversation but did not recall any specifics. The conversation PO Torres was having was private and none of the statements he had made were directed at § 87(2)(b). When asked whether he used the phrase “dick sucked” he stated he was not going to deny it but he did not recall. While speaking to § 87(2)(b) from the window, PO Torres told her that she would not be complaining if Spanish music was playing and believed he used the word “bachata.” § 87(2)(b) explained to PO Torres why she took offense to his example of “bachata” but he did not recall what she had said. While on the sidewalk with § 87(2)(b) PO Torres told her they should not act like his comment about Spanish music was not based on fact and that it is played loudly early in the morning.

The video provided to the investigation did not capture the allegations (Board Review 01).

It was determined based on corroborating statements from both parties that PO Torres used sexually explicit language while on duty, in uniform and standing outside on a sidewalk. It was also determined that PO Torres used an ethnic inference of Hispanic music while speaking to § 87(2)(b). Based on both statements, the investigation is crediting that § 87(2)(b) was offended by both statements made by PO Torres.

According to NYPD Patrol Guide, Section 200-02 and 203-10 (Board Reviews 04 and 05), the police department pledges to maintain a higher standard of integrity than is generally expected of others because so much is expected of the members of the police department. The use of discourteous or disrespectful remarks regarding another person’s ethnicity, race, gender, gender identity/expression, or sexual orientation is prohibited conduct while in contact with the public.

According to Locurto v. Giuliani, 447 F.3d 159 and Pappas v. Giuliani, 290 F.3d 143 (Board Reviews 06 and 07), the effectiveness of a police department depends upon the respect and trust of the community it serves. If a police department treats segments of the community with disrespect based on aspects of their identity, such as their race, religion, gender or sexual orientation, this behavior erodes the relationship of trust and impairs the department’s ability to serve the community. Since racist, homophobic or misogynistic statements made by individual officers may harm relations between the police department and the community, these statements are subject to disciplinary actions by the department.

Although PO Torres was addressing police officers in a private conversation, PO Torres was doing so while on duty, in uniform, and on a sidewalk where contact with the members of the public is highly probable. It was determined that PO Torres made two comments which offended § 87(2)(b) due to their misogynistic nature and disrespectful ethnic remark. As a uniformed member of the NYPD, PO Torres is expected to maintain the higher standard of integrity that is noted in the NYPD’s mission statement, along with acting in accord with the interest of maintaining the relationship between the public outlined in Locurto v. Giuliani and Pappas v. Giuliani by members of service. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 08).
- PO Torres has been a member of service for five and has been a subject in two prior CCRB complaints and two allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- As of November 5, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (Board Review 10).

Squad No. 15

Investigator:	<u>Valentina Concha-Toro</u>	<u>Inv. Valentina Concha-Toro</u>	<u>January 22, 2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Simon Wang</u>	<u>IM Simon Wang</u>	<u>02/02/2021</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date